

## Message Text

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ACTION EA-06

INFO OCT-01 SS-14 ISO-00 NSC-05 NSCE-00 INR-05 INRE-00

CIAE-00 L-01 PM-03 DODE-00 ACDA-10 SP-02 PRS-01

USIE-00 SSO-00 EUR-08 H-01 /057 W

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O 310723Z JUL 76

FM AMEMBASSY WELLINGTON

TO SECSTATE WASHDC NIACT IMMEDIATE 1759

C O N F I D E N T I A L SECTION 1 OF 2 WELLINGTON 2871

LIMDIS

E.O. 11652: GDS

TAGS: ANZUS, PFOR, MARR, MILI, NZ

SUBJ: AGREEMENTS ON LIABILITY FOR NUCLEAR ACCIDENTS

1. SUMMARY: THE AUCKLAND STAR (JULY 31) HAS RUN STORY THAT CANADA HAS AN AGREEMENT WITH THE UNITED STATES COVERING LIABILITY BY THE US FOR WARHEADS AS WELL AS REACTORS IN VISITING NUCLEAR WARSHIPS. THE ARTICLE ASKS WHY, IF CANADA CAN NEGOTIATE SUCH A LIABILITY PROVISION, IS THE GOVERNMENT OF NEW ZEALAND UNABLE TO DO SO. IN THE CURRENT ENVIRONMENT OF INTENSE CONTROVERSEY OVER NPW VISITS THE QUESTION OF LIABILITY AGREEMENTS BETWEEN THE U.S. AND ITS OTHER ALLIES WILL DRAW WIDE ATTENTION IN N.Z. AND THIS IS CERTAIN TO BE RAISED WITH DEPUTY SECRETARY ROBINSON DURING VISIT HERE.

ACTION REQUESTED: URGENTLY NEED DEPARTMENT GUIDANCE ON DEALING WITH QUESTIONS ON SPECIAL AGREEMENTS MADE BY U.S. WITH INDIVIDUAL ALLIES ON LIABILITY FOR ACCIDENTS INVOLVING NUCLEAR REACTORS OR NUCLEAR WEAPONS.

2. TEXT OF AUCKLAND STAR STORY FOLLOWS:

CANADA HAS WARHEADS COVERED

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CANADA HAS AN AGREEMENT WITH THE UNITED STATES COVERING LIABILITY BY THE US FOR WARHEADS AS WELL AS REACTORS IN VISITING NUCLEAR WARSHIPS.

NEW ZEALAND'S FOREIGN SAME ARRANGEMENT. IT RELIES ON THE JOINT US CONGRESSIONAL RESOLUTION ACCEPTING ABSOLUTE (NO FAULT) LIABILITY FOR DAMAGES FROM A NUCLEAR REACTOR INCIDENT ONLY.

OUR FOREIGN AFFAIRS MINISTRY WAS NOT AWARE OF THE AGREEMENT MADE IN 1968-69 BETWEEN CANADA AND THE US UNTIL THIS CORRESPONDENT SUPPLIED THE MINISTRY WITH INFORMATION RECEIVED FROM CANADA.

THE ORIGINAL STATEMENT WITHOUT THE CANADIAN AMENDMENT IS DIRECTED TO OTHER COUNTRIES APART FROM NZ. HERE IT IS STILL CLASSIFIED INFORMATION. XOCHEBEW BPVPOCE (#) FOREIGN AFFAIRS MINISTRY, APPARENTLY PLEASED

TO RECEIVE THE NEW INFORMATION, IS NOW CHECKING INTO THE MATTER.

THE QUESTION IS: IF CANADA CAN NEGOTIATE AN EXTRA LIABILITY PROVISION, CAN NEW ZEALAND DO THE SAME? AND IF NOT, WHY NOT?

EARLIER I ASKED THE PRIME MINISTER, MR MULDOON, IF THE AMERICAN RESOLUTION ON UNLIMITED LIABILITY (FORMALLY KNOWN AS PUBLIC LAW 93-513) COVERED ANY ACCIDENT INVOLVING NUCLEAR WEAPONS.

MR MULDOON REPLIED: "THE JOINT CONGRESSIONAL RESOLUTION COVERS ONLY ACCIDENTS INVOLVING NUCLEAR REACTORS. ANY NUCLEAR WEAPONS THAT MIGHT BE ON BOARD A VISITING WARSHIP WOULD BE IN AN UNARMED STATE.

"IF THE POSSIBILITY OF A REACTOR ACCIDENT IS VIRTUALLY NON-EXISTENT, THE POSSIBILITY OF ONE INVOLVING NUCLEAR WEAPONS IS INFINITESIMAL."

BUT CANADA APPARENTLY CONSIDERED IT PRUDENT TO HAVE AN EXTRA PROTECTION.

IN CONTRAST TO THE GREAT IMPORTANCE NEW ZEALAND AUTHORITIES PLACE ON THE JOINT CONGRESSIONAL RESOLUTION ON UNLIMITED LIABILITY, THAT SAME RESOLUTION APPEARS TO RECEIVE COOL TREATMENT FROM THE LEGAL ADVISORY DIVISION OF CANADA'S DEPARTMENT OF EXTERNAL AFFAIRS.

IN RESPONSE TO MY QUESTIONS, THE LEGAL ADVISORY DIVISION CONFIDENTIAL

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WRITES:

"THE US CONGRESS ENACTED PUBLIC LAW 93-513 ON DECEMBER 6, 1974. IT IS NOTHING MORE THAN A UNILATERAL DECLARATION AND MAY BE REPEALED AT ANY TIME WITHOUT ANY NOTICE TO THE OUTSIDE WORLD.

NOTE BY OC/T: WELLINGTON 2871/1 AS RECEIVED.

CORRECTION TO FOLLOW.

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C O N F I D E N T I A L SECTION 2 OF 2 WELLINGTON 2871

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"IT CAN HAVE NO STATUS OUTSIDE A US COURT. IT STATES THAT THE US WILL PAY CLAIMS FOR INJURY, DEATH, OR DAMAGE TO PROPERTY, PROVEN TO HAVE RESULTED FROM A NUCLEAR INCIDENT INVOLVING THE NUCLEAR REACTOR OF A US WARSHIP.

"LONG BEFORE THIS ENACTMENT CANADIAN AUTHORITIES HAD TO CONSIDER UNDER WHAT CONDITIONS VISITS BY WARSHIPS WOULD BE CONSIDERED POSSIBLE AND ACCEPTABLE.

"IN FEBRUARY OF 1967, THE CANADIAN GOVERNMENT AGREED THAT AN UNDERTAKING BY THE US GOVERNMENT STIPULATING THAT EXCEPT IN CASES COVERED BY THE 1951 NATO STATUS OF FORCES AGREEMENT, CLAIMS ARISING OUT OF A NUCLEAR INCIDENT INVOLVING A VISITING NUCLEAR-POWERED WARSHIP SHOULD BE DEALT WITH THROUGH DIPLOMATIC CHANNELS, IN ACCORDANCE WITH PROCEDURES FOR THE SETTLEMENT OF INTERNATIONAL CLAIMS UNDER GENERALLY ACCEPTED PRINCIPLES OF LAW AND EQUITY, COULD BE APPROVED AS SUFFICIENT EXPRESSION OF RESPONSIBILITY.

"SUCH A STATEMENT, IDENTICAL TO ONES DIRECTED TO OTHER COUNTRIES, WAS OFFICIALLY SUBMITTED TO THE CANADIAN AUTHORITIES BY THE US SECRETARY OF STATE ON FEBRUARY 20, 1967.

"ON MAY 6, 1968, AND AT THE INVITATION OF THE CANADIAN GOVERNMENT THE STATEMENT WAS AMENDED BY THE STATE DEPARTMENT SO AS TO ALSO COVER INCIDENTS INVOLVING NUCLEAR WARHEADS BEING CARRIED BY VISITING US WARSHIPS.

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"ON MARCH 18, 1969, THE CANADIAN AUTHORITIES OFFICIALLY INFORMED THE STATE DEPARTMENT THAT CANADA CONSIDERED THE 1967 STATEMENT AS AMENDED TO ITS SATISFACTION.

"IN 1970 A SIMILAR STATEMENT BY THE UK, WAS UNDER CONSIDERATION BUT A GOVERNMENT STUDY EXPRESSED ITSELF SATISFIED WITH THE LIABILITY COVER."

THE LEGAL ADVISORY DIVISION STRESSES THAT THE STATEMENTS ALSO DEALT WITH SAFETY STANDARDS MEANT TO ENSURE THAT THE RISK OF INCIDENTS WAS MINIMIZED.

"THE STATEMENTS SIMPLY REINFORCED THE LEGAL SITUATION AS IT WAS THEN PERCEIVED AS A RESULT OF THE STATUS OF FORCES AGREEMENT (SOFA) AND CUSTOMARY PROCEDURES FOR THE SETTLEMENT OF INTERNATIONAL CLAIMS UNDER GENERALLY ACCEPTED PRINCIPLES OF LAW AND EQUITY."

THE COMBINED EFFECT OF SOFA, CANADA'S VISITING FORCES ACT, AND THOSE GENERAL PRINCIPLES OF LAW EMPHASIZED BY THE STATEMENTS, IS NOT SPELT OUT IN THE PAPER SUPPLIED, BUT IT DOES ADD:

"IT SHOULD SUFFICE TO SAY THAT CANADA HAS CONSIDERED THESE TO BE ADEQUATE TO ALLOW, IN CONJUNCTION WITH OTHER SAFETY REQUIREMENTS, VISITS TO ITS PORTS OF NUCLEAR-POWERED USS WARSHIPS OR US SHIPS CARRYING NUCLEAR WARHEADS."

CANADA'S LEGAL ADVISERS STILL CONSIDER THAT LIABILITY COULD BE MORE TIGHTLY COVERED.

BUT THEY FEEL THAT IN THE LIGHT OF THE POLITICAL AND MILITARY CIRCUMSTANCES, THE ARRANGEMENTS ARE SATISFACTORY.

PUBLIC LAW 93-513 (THE JOINT RESOLUTION OF CONGRESS) OF DECEMBER 6, 1974, CONTRIBUTED TO REINFORCING THE ASSURANCES ALREADY RECEIVED.

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## Message Attributes

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